Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service) DA 98-2410

Comments of the Wyoming Public Service Commission

Dated: December 22, 1998

The Wyoming Public Service Commission (WPSC) hereby submits its comments to the Federal Communications Commission (Commission) in the above captioned matter in response to the Second Recommended Decision (Recommended Decision) of the Federal-State Joint Board on Universal Service. The WPSC is an agency of the State of Wyoming having the jurisdiction to regulate, *inter alia,* the intrastate activities of telecommunications companies serving in Wyoming. As such, the WPSC is an interested party to this proceeding. Additionally, the WPSC has been a full participant in the Federal-State Board on Universal Service (Joint Board) process, in that we have previously filed comments on this matter, we have used the *ex parte* process to communicate our concerns about the special problems of low density, high-cost, rural states to individual Joint Board members, and we have attended meetings with the Joint Board and its staff.

The WPSC thanks the Joint Board for the consideration and recognition that it has given low density, high-cost, rural states, such as Wyoming, in its Recommended Decision. We believe that the Recommended Decision gives better focus and emphasis to the reasonably comparable standard that is required by the federal Telecommunications Act of 1996 (1996 Act). We believe that the Recommended Decision generally allows individual states to take the actions necessary to provide an opportunity for local telecommunications competition while helping to maintain the affordability of local rates. In our opinion, the Recommended Decision is a thoughtful document that addresses the needs and concerns of the rural states more directly than did earlier decisions, yet there are still some issues on which we ask further consideration and review. Finally, we recommend that, as the Commission reviews the many comments it will receive in this matter, including ours below, it continue to keep at the forefront of its decision the two key universal service standards specifically listed in the 1996 Act: affordability and reasonable comparability of rates and services.

Regarding *reasonable comparability*, we wholeheartedly endorse the Joint Board's interpretation that this phrase refers to a "fair range of urban and rural rates both within a state's borders and among states nationwide."[1] We also support the concept of continuing the partnership between the state and federal jurisdictions in which states make reasonable efforts to keep rates *affordable* but the federal mechanism will assist in keeping rates affordable where states cannot do so alone.[2] Both of these concepts are extremely important to high cost, low density, rural states such as Wyoming and both are consistent with recent actions of the WPSC and Wyoming local service providers[3]. Some parties have encouraged the Joint Board to interpret the reasonable comparability standard as one that only requires a look at urban areas versus rural areas within a state. But what if there is no urban area in a state? What if the largest city in the state has a population of 50,000 (as is the case in Wyoming) and little ability to support the twenty-five percent (25%) of that state's access lines that are truly in high cost areas — areas where the "major"population centers have only a few hundred or, at most, a few thousand residents? It hardly seems fair or rational that the Commission would require a comparability standard that judges all of Wyoming's rural areas in light of the costs, rates, and services offered in Cheyenne or Casper, when Wyoming's

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[1] Second Recommended Decision, Released November 25, 1998, p. 10, para. 15.

[2] Ibid. p. 10, para. 16 and p. 11, para. 19.

[3] These actions include the creation of a Wyoming universal service fund that supports areas of the state with high, cost-based rates; the work on and review of total service long-run incremental cost studies that identify high cost areas of Wyoming; deaveraging at modest geographic levels rather than to extremely small locations; and authorizing reductions in intrastate toll and switched access charges in recognition that rural customers often have a disproportionate level of toll calls that are required.

commercial market areas extend over state lines to include our neighboring cities of Denver, Colorado, Billings, Montana, and Salt Lake City, Utah.

As to the forward-looking cost model, we agree that more work should be done on the model.[4] We also agree, in concept, that a forward looking cost model is an appropriate method upon which to calculate the level of support to be given to each state or each provider, but clearly understand that the devil is in the details. Thus far, the tentative results of the models have provided a greater level of confidence when estimating costs for urban areas than for rural areas. It is absolutely necessary that this inconsistency be resolved before a model is used to provide support to both rural and urban states served by non-rural carriers. Resolving the issue of the accuracy of the models for rural states is consistent with the Joint Board's recommendation that the current rules be modified "to resolve any comparability issues in rural states primarily served by a large carrier".[5] Both issues deal with making sure that a state is not penalized in its level of support simply because of the characteristics of the state or the particular provider serving the state. Resolving the issue of the accuracy of the model as it applies to rural states is also consistent with the Joint Board's recommendation that the use of a forward looking cost model not be a precedent for providing support to non-rural carriers until the Rural Task Force has an opportunity to review the unique challenges associated with high cost, rural areas[6]. It makes little difference in the forward-looking cost whether a sparsely populated area is served by U S WEST or a family-owned independent provider. The evidence in our hearings shows that rural areas are extremely high cost.

Wyoming is well along in the process of completing the steps necessary to pave the way for local competition. We have deliberated and are issuing our most important (U S WEST and AT&T) interconnection arbitration order. We have reviewed and had hearings on forward looking cost

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[4] Second Recommended Decision, p. 14, para. 28.

[5] Ibid. page 15, para. 29.

[6] Ibid. para. 30.

models which remove subsidies and form the basis for local ratemaking. We have a rulemaking to look at mandated access charge reductions. We are in the process of eliminating subsidies from intrastate rates. As a result of our actions, we cannot afford to wait much longer for the Commission's modifications to the federal universal service programs. We agree with the Rural Coalition's comments that no further delays are acceptable. Now is the time to implement a program that abolishes all size-based distinctions (such as the weighting of dial equipment minutes). Now is the time to put in place a universal service fund that completes the process of moving to a competitive environment while keeping local rates *affordable and reasonably comparable*.

The WPSC asks that the Commission reconsider the Joint Board recommendation that federal support initially be determined by measuring costs at the study area level of detail.[7] We believe that adoption of the Joint Board's recommendation in this regard may disadvantage the development of competition or, more importantly, prevent rates from remaining affordable in certain areas. It also seems inconsistent with a statement in a later section of the Recommended Decision that the distribution methodology is "grounded in the principle that additional federal high cost support should be targeted to areas with the greatest need."[8] Providing an illustration that is realistic given Wyoming's population characteristics, we show the difference between levels of support that would be provided if that support were based on a study area or on a reasonable level of deaveraging. Our example follows:

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[7] Ibid. p. 16, para.32-33.

[8] Ibid. p. 18, para 41. Also see p. 23, para. 58.

	Example Non-Rural Carrier Access Lines	Example Monthly Cost Per Line	Example Benchmark Cost Level for Full Support	Average Study Area Support / Total Lines[9]	Zone Deaveraged Support /Total Lines[10]
Base Rate Area	80,000	$20	$25	$13.57	$16.43
Zone One	15,000	$40	$25	$13.57	$16.43
Zone Two	20,000	$60	$25	$13.57	$16.43
Zone Three	25,000	$80	$25	$13.57	$16.43

The difference in the two support levels is more than $400,000[11] per month for this example company, or more than $4,800,000 per year. With a total population of less than 500,000 in Wyoming, this difference amounts to about $10 per person (and even more on a per access line basis) per year. With the local average rate in Wyoming already exceeding $25, *before surcharges and taxes,* the addition of an extra $1 or $2 per month can make the critical difference in the sustainable affordability of local telephone service for some customers. On the other hand, if we are forced to price at an average level for the service territory, based on support levels and the need to keep rates affordable, then the incumbent provider may be disadvantaged if a competitor were to come in and serve only the base rate area of the service territory. While not discussed extensively by the Joint Board, one of the underlying objectives of the 1996 Act was to clear the way for the development of competition in local markets. According to Chairman Kennard, competitive

[9] Average study area cost would be $38.57. If $25 per line is subtracted from the per line cost of $38.57, this results in an average per line support level of $13.57.

[10] Base rate area would receive no support, Zone One lines would receive $15 of support, Zone Two lines would receive $35 of support, Zone Three lines would receive $55 of support. This is a total monthly support level of $2,300,000. If this is spread over all lines (not just supported lines) for comparison purposes to the previous calculation, the average amount per line is $16.43 per month.

[11] If one takes the difference between $16.43 and $13.57 the result is $2.86 per line. When this is multiplied by the total number of lines (140,000), the result is $400,400. When this number is annualized, the result is $4,804,800.

neutrality has also been a primary principle of achieving universal access.[12]

The WPSC is concerned about the lack of a recommendation from the Joint Board regarding a specific mechanism for calculating the distribution to each state or high cost area. We agree with the use of forward looking cost studies for the distribution, the concept of identifying national cost, and the concept of taking into account each state's ability to support its universal service needs internally. We have already expressed concerns regarding the use of a study area for the distributions. However, the lack of specifics beyond that are truly disconcerting. The Joint Board identified, but did not sufficiently describe, several ways that the state's ability to internally fund its needs could be identified, including: the ratio of lines in a state with costs above a certain threshold; an established dollar value per line; an established percentage of intrastate revenue; or the ratio of intrastate traffic volume to total traffic volume.[13] However, without knowing which of these cost parameters (or some other as yet unidentified threshold) might be chosen, it is impossible to fully understand the impact on Wyoming customers and to assess whether the affordability and comparability standards continue to be met. Based on experience and a statewide customer survey, we believe that making the local service customer pay more than $25 per month[14] and more than a five percent (5%) surcharge on intrastate rates will be problematic in that it no longer meets the affordability or comparability standard.

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[12] Remarks of William E. Kennard, Chairman, FCC at the Regulators' Breakfast ITU Plenipotentiary Conference dated October 13, 1998. "I believe there are three basic principles which should guide our policies on universal access: 1. Reasonable and Affordable Rates for All Consumers; 2. Competitive and Technological Neutrality; and 3. Universal Service Mechanisms that are Transparent and Fair."

[13] Second Recommended Decision, p. 19, para. 44.

[14] In Wyoming, customers currently pay a $25 rate, *plus surcharges and taxes,* before state universal service funds are received. In addition, all customers are currently billed a six percent (6%) surcharge to support the WUSF. Customers have indicated in a survey conducted in 1997 that a rate much larger than this would impact their ability or desire to maintain local telephone service.

We understand that a coalition of rural states is filing comments that expresses concern about Joint Board members' statements that the federal fund is not expected to appreciably grow as a result of the recommended modifications to the federal support programs. We believe that these statements are premature since a number of steps must be completed before such estimates can be reasonably made, including completion of model inputs and runs and selection of criteria for determining whether a state needs federal assistance. We also agree that these statements should not be used in any way to limit the size of the fund or to modify otherwise sound universal service principles.

In its recommended Use of Support, the Joint Board recommends that carriers be required to certify that they are applying federal high cost support in a manner consistent with Section 254.[15] The recommendation goes on to cite Section 254(e) of the 1996 Act which states that carriers "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." This raises a question in our minds of whether the WPSC would be federally (and improperly) prohibited, by both the specific language and the tenor of the recommendation, from requiring that the federal support be passed through to customers as an offset to local service prices. We currently require carriers to pass through to customers, as explicit bill credits, any support received from the state universal service fund and believe that some consideration should be made of a similar concept relative to the federal funds, depending of course, on individual state circumstances and ratemaking policies. We ask that this option not be prohibited under the interpretation of Section 254(e).

In looking at how contributions are to be assessed to carriers, the Joint Board recommends, depending on the resolution of the Fifth Circuit case, that the Commission consider assessing contributions on both interstate and intrastate revenues, and allowing states to do the same for their intrastate needs. It appears to us that this only makes sense if the federal support were to be the primary support for high cost needs, and thus, a larger revenue base would be desirable. However,

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[15] Second Recommended Decision. p.23, para. 57.

the Recommended Decision places the state funding (whether through a universal service fund, implicit subsidies, or other sources) as the primary means of funding the state's high cost needs. Thus, the use of combined interstate/intrastate revenues as the assessment base makes less sense, and in fact, appears to be a double dip against the intrastate revenues if a state has its own universal service fund. However, if a percentage assessment is deemed to be more desirable, then we urge you to carefully consider whether the Commission has the jurisdiction to authorize a state universal service fund assessment of interstate revenues for funding state USF needs. If not, does that then mean that the state revenues may be more heavily assessed than the interstate revenues placing an even bigger burden on intrastate customers? We think that this issue should be considered in conjunction with the issue of the state's ability to fund its own high cost needs since the issues are interrelated. Alternatively, a flat, per-line basis is recommended for consideration. The WPSC believes that the flat, per-line alternative should be given further consideration than it seems to have been given thus far, since on its face, it appears to be competitively neutral, avoids any incentive for arbitraging interstate/intrastate revenue reporting, and is easily explained.

The WPSC wishes to thank the Joint Board for its responsiveness to the needs and concerns of high cost, rural states such as Wyoming. However, in sending its recommendations to the Commission, there are still some gaps that need to be carefully studied and filled: the use of the cost model for rural areas; the level of averaging or deaveraging to be used for cost determinations; the state's ability to meet it own needs; the use of the funds; and finally, the revenues to be assessed. We ask for your continued thoughtful consideration of these issues. We also extend our offer to continue to provide input into the process or assist the Commission in any way we can.

Respectfully Submitted,

STEVE ELLENBECKER	KRISTIN H. LEE	STEVE FURTNEY
Chairman	Deputy Chair	Commissioner